

SouthMAC 12 Meeting 16 July 2001

CANBERRA

MINUTES

In attendance

Bill Nagle (Chair)
Geoff Richardson, AFMA
Joe Pirrello, Industry
Les Scott, Industry
Martin Exel, Industry
Ian Hay, AAD
Keith Sainsbury, CSIRO
Dennis Witt, DPIWE
Melissa Brown, AFMA (EO)

Observers

Viki O'Brien, AFMA
Gerry Geen, Everfresh
Bill Palmer, AFMA
Anthony de Fries, AFMA (Agenda Items 6 & 7)
Katrina Maguire, AFMA (Agenda Items 6 & 7)
Barbara Jones, EA (Agenda Item 7)
Connell O'Connell, EA (Agenda Item 7)
Frank Meere, AFMA (Agenda Item 7)

The twelfth meeting of the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC) was held in Canberra on 16 July 2001. The primary objective was to discuss the first draft statutory Management Plan for the Heard Island and McDonald Islands (HIMI) Fishery.

Declaration of interests

Messrs Pirrello and Exel declared their conflicts of interest on all agenda items, in particular Item 5 on the draft HIMI Management Plan.

Adoption of Agenda

Ms O'Brien requested and SouthMAC agreed, that the issue of interim management arrangements for the HIMI Fishery be placed on the agenda following Item 5. The agenda was subsequently adopted.

Apologies

Apologies were received from Margaret Moore and Mark Flanigan who were unable to attend due to illness. The Committee noted that Les Scott and Keith Sainsbury would be arriving late, at approximately 9.45am.

Agenda item 1 - Adoption of Minutes

The Committee noted that the draft SouthMAC 11 minutes had been circulated to members on 29 May 2001. No comments were received prior to or during SouthMAC 12. Mr Pirrello moved that the minutes of SouthMAC 11, be accepted as a true and accurate record of the meeting. Mr Witt seconded this motion.

Agenda Item - Action Arising (AA) from SouthMAC 11

Action Arising 1 – SouthMAC to write to AAD requesting that a nomination from SouthMAC be involved in the stock assessment process for the HIMI Fishery.

Ms O'Brien informed the Committee that discussions were held on this issue at SAFAG. Members agreed that it was too late for a new party to be involved in this years stock assessment process, however, it is critical that they be involved from December 2001, to have input into next years assessment. It was agreed that SAFAG would discuss a suitable representative at its September 2001 meeting.

Action Arising 2 – AFMA to seek legal advice on the legalities of using a Temporary Order to modify environmental requirements under the Plan.

The Committee noted the advice that the use of a Temporary Order is not restricted to emergency situations and maybe used to vary environmental requirements. Mr Exel advised that his copy of the *Fisheries Management Act 1991* (FMA 91), only permits for the use of two 3 month Temporary Orders. Mr Palmer advised that the FMA91 is currently being amended to allow for Temporary Orders to have effect for 12 months. This change is included in the amendments for the United Nations Fish Stock Agreement (UNFSA). Members noted that it has been passed by Parliament and signed by the Governor General, however will not become law until the required number of parties sign onto UNFSA. This is expected to happen in the near future. Mr Exel requested a copy of the amendment and Mr Palmer advised that he would circulate copies to all members.

Action Arising 3 – AFMA to incorporate comments from SouthMAC 11 on the draft time line for the annual HIMI TAC setting process and submit to SAFAG for comment and finalisation.

Ms O'Brien advised the Committee that the timetable had been updated and would ensure that members were provided with a copy.

Mr Hay advised that he had attended the April meeting of SAFAG and indicated that it would be very useful to have an overlap between the FAG and the MAC once a year. The Committee agreed and recommended that their November meeting be held in association with SAFAG in Hobart.

Agenda Item 3 - AFMA Board Outcomes

The Committee noted that the Board out-of-session had endorsed the:

- report of the HIMI Independent Advisory Panel (IAP), which in essence sees the adoption of the industry proposal of 8 August 2000; and
- recommendations from SouthMAC 11, with the exception of not listing sub-Antarctic stone crabs as a major bycatch species of commercial interest.

Ms O'Brien informed members that stone crabs were not agreed to as only 8 kgs had been taken since the inception of the Fishery in 1996. The Committee noted at the time of making this recommendation it had considered that crabs had been included under the heading of invertebrate, which recorded the greatest bycatch by weight of the Fishery. Members noted that the AFMA Observer Section provided advice to the contrary, indicating that observers have been directed to ensure that crab catches are recorded separately.

Agenda Item 4 - HIMI Management Plan Timetables

Ms O'Brien advised members that two timetables had been prepared for their information, relating to the introduction of the HIMI Management Plan. The Committee noted that the first outlined the processes and time frames which need to be achieved to have the HIMI Management Plan gazetted and in effect by 1 December 2001. This includes public consultation in September for a period of 30 days. The second timetable outlines the processes required for the implementation of the Management Plan, which include:

- the Plans acceptance by the Senate and House of Representatives;
- registration of eligible applications;
- appeals processes; and
- the grant of SFRs.

Members noted that AFMA had provided drafting instructions for the Plan to the Office of Legislative Drafting (OLD) based on the decisions of the AFMA Board and advice from SouthMAC. A first draft was received by AFMA and comments were fed back, with the second draft to be discussed under Item 5.

In discussing the second timetable, Mr Exel queried what the difference was between the internal review and Statutory Fishing Right Allocation Review Panel (SFRARP) processes. Mr Palmer advised that once a person applies for registration of SFRs, they automatically have the right to apply for an internal review of the AAT. Mr Scott questioned if it is possible to omit the AAT and proceed straight to the judicial review system. Mr Palmer advised that this would only occur if the appellant wanted to overturn the Plan. In terms of the SFRARP process, members noted that those that are determined as eligible can appeal the percentage of SFRs they are granted through SFRARP. Members agreed that the panel should be formed now, in order to eliminate any delays in the process.

The Committee agreed that AFMA ensure that SFRARP is appointed prior to the introduction of the Plan.

Mr Exel raised concerns relating to the ability to export during the period following the gazettal of the Plan and prior to its accreditation by EA. He considered that no exporting could occur until such time that the Plan is accredited. Ms O'Brien advised that Ms Maguire would be able to respond to his concerns under Agenda Item 6.

Agenda Item 5A - HIMI Interim Management Arrangements

The Committee agreed that there will need to be interim management arrangements in place from 1 December 2001, until the formal grant of SFRs occur under the Plan.

Ms O'Brien suggested that the following transitional arrangements might be adopted from 1 December 2001:

- that Fishing Permits be issued to eligible boats, which are nominated against at least 25.5% of the available quota. It would be a condition of these Permits that 25.5% of quota remains nominated against the vessel, while it is fishing in the HIMI Fishery;
- quota be issued in the same proportions as specified in the AFMA Board decision of 22 May 2001; and
- that management arrangements mirror those proposed under the draft Management Plan and be implemented through conditions on Permits.

Members agreed that quota transfers would be allowed, however, if an operator fished with less than 25.5% of quota against their vessel they would be in breach of their Permit conditions. The Committee further agreed that Fishing Permits should be issued for the period 1 December 2001 to 30 November 2002.

Mr Exel advised that Scientific Permits would need to be taken in to account under the interim arrangements, however, Ms O'Brien informed members that they can be issued under Section 33 of the FMA 91.

Members agreed that the Board at its August 2001 meeting should consider approving the draft Plan for public release and at its October 2001 meeting consider the draft interim policy. Members originally had reservations leaving it until the October meeting to submit the interim policy, as they considered new vessels to the fishery would be required to notify CCAMLR three months prior to operations, however, Mr Hay advised that the requirement to notify of a vessel operating in an established fishery is 7 days to CCAMLR within issuing of permit.

SouthMAC agreed:

- that the draft Plan be considered by the AFMA Board at its August 2001 meeting;
- that the draft interim policy be considered by the AFMA Board at its October 2001 meeting; and
- to recommend to the AFMA Board that interim management arrangements for HIMI Fishery cover the period 1 December 2001 to 31 November 2002.

Agenda Item 5 - Draft HIMI Management Plan

The Chair requested that SouthMAC consider in depth the draft HIMI Management Plan as prepared by OLD. Ms O'Brien advised that following the Board's endorsement of the IAP's report and the settlement of all outstanding matters relating to the HIMI Management Plan, drafting instructions were forwarded to OLD. Members noted that the first draft was delivered to AFMA on 27 June 2001 and had been returned to OLD for further refinement, following a number of early comments from Mr Exel and AFMA staff. The Committee agreed to go through the Plan section by section. Minor amendments were agreed to for some sections, however, the major amendments agreed to are listed below:

Section 2 Commencement - The Committee agreed that the commencement of the Plan should be amended from "1 December 2001" to "upon gazettal", in the event that the Plan is not gazetted until after 1 December 2001.

Section 3 Definitions

<i>Area of the fishery</i>	Mr Exel expressed concern in relation to the area of the fishery, he advised that it should include the territorial waters and the additional 1 nautical mile buffer zone, as this would provide for deductions of research catches from SFRs under the Plan. Mr Palmer agreed that they be included in the Plan and then exclude commercial fishing from these areas through Directions. Mr Hay agreed to check the coordinates and provide them to AFMA.
<i>Bycatch</i>	The Committee agreed that the definition of bycatch would to be amended to clarify the connections between the terms, CCAMLR bycatch limits, non-target and bycatch and to include reference to seabirds and marine mammals.
<i>CCAMLR Conservation Measures</i>	Amend to read "means the requirements put in place by CCAMLR"
<i>Fishing year</i>	Amend to 1 December to 30 November
<i>Interested persons</i>	Mr Exel expressed concerns with the reference to "persons involved in processing fish from the fishery" as an example of

interested persons. Ms O'Brien advised that anyone can be listed as an interested persons. These people are currently listed of the Sub-Antarctic Register of Interest and receive relevant information on the Fishery. The Committee agreed to leave this section as presented.

Statutory Fishing Right

The Committee agreed that SFRs should be referred to "being the proportions of the TAC allocated to the right for the fishing year.

Section 4 *Application of catch to statutory fishing rights* - The Committee agreed that the Plan will have to ensure that fished SFRs can still be used for Minimum Quota Holding purposes, that is caught quota/SFRs can be transferred.

Section 5 *Origin of geographical coordinates* - The Committee agreed that AFMA check to determine if the datum to be used will be the Australian Geodetic Datum 1996.

Section 6 *Objectives* - Members noted that the first seven objectives had been taken from the FMA 91. The Committee recommended that (h) should read "to ensure that conservation and management measures in the fishery implement Australia's obligations under international agreements that deal with fish stocks and all other relevant international agreements".

Section 7 *Measures* - The Committee agreed that:

- the measures be reordered to reflect the order of the objectives;
- a reference be made that bycatch limitations not be exceeded; and
- insert a new measure which takes account of cost-effective management, which Gerry Geen agreed to provide.

Section 8 *Performance Criteria* - The Committee agreed that:

- the performance criteria be reordered to reflect the order of the objectives and measures;
- a reference be made carryovers in relation to not exceeding TACs; and
- replace (1) h and (2) which relate to economic efficiency, with the words provided by Gerry Geen.

Section 9 *Bycatch* - Mr Exel requested that a note be inserted which states that the limits for bycatch species are to be enforced through conditions on SFRs.

Section 10 *Fisheries Assessment Plan* - Members agreed that monitoring be defined as surveys and tagging and a reference be made to the sub-Antarctic 5 Year Strategic Research Plan.

Section 11 *Persons to whom the Plan applies* - The Committee agreed to delete this section as it is covered under Section 12.

Part 2 **SFRs**

Section 13 *Quantity of fish that may be taken* - The Committee requested that AFMA discuss inclusion of carryover provisions in the Plan with OLD.

Section 14 *Right to use a boat for scientific research* - Mr Exel requested that a note be inserted which states that Scientific Permits may be issued under the FMA91 to cover research, which does not target target species. The Committee agreed to this amendment.

Division 3A **Additional target species** - Ms O'Brien advised that a note would need to be inserted which indicates that if new species which might be commercially fished (other than the three listed in Schedule 3) are identified within the area of the fishery, access to those species will be considered by AFMA according to the relevant Fisheries Management Paper at that time. The Committee agreed to this amendment.

Division 4 **Obligations of holders of statutory fishing rights**

Section 20 *Nomination of a boat by a holder of a statutory fishing right* - Ms O'Brien informed members that an additional point would need to be inserted which will ensure that AFMA does not register at any time more than 1 boat as a nominated boat in respect of a statutory fishing right. The Committee agreed to this amendment.

Section 22 *Environmental requirements* - Mr Exel suggested that these requirements be inserted into Regulations, as it would be more efficient to amend them in the event of a change. The Committee agreed that it had been settled at previous meetings that they would be put into the Plan, as it would be more likely that the Plan would be approved under the environment legislation.

Members agreed that an amendment be made to allow for the responsible use of packing bands eg, to secure gear.

Sections 23 – 25 *Contingency arrangements – breakdown of meal plant – disposal of fish meal – injury to, or death of, seabird or marine mammal* - Members agreed to remove from the Plan the reporting format on the above incidences.

Division 6 **Transfer and lease of statutory fishing rights**

Schedule 1 *Area of the fishery* - The Committee agreed that the area of the fishery should include territorial waters and the 1nm buffer zone, as this would provide for deductions of research catches from SFRs under the Plan.

Schedule 2 *Target species* - The Committee agreed to remove the minimum length restrictions on mackerel icefish as this only refers to an excess amount caught.

Agenda Item 6 - Strategic Assessment Report

Ms Maguire advised members that the draft HIMI Strategic Assessment Report is currently being redrafted following advice from SAFAG. It is envisaged that a second draft will be distributed to SouthMAC and SAFAG for comment on 25 July 2001, with a view to have comments provided at SouthMAC 13 on 6 August 2001. Mr de Fries advised that the report had progressed since the last meeting of SAFAG, with further improvements being made following feedback from Environment Australia on the draft Bass Strait Scallop Strategic Assessment Report. The Committee noted that the intent is the draft report go out for public comment in conjunction with the Plan. Members further noted the structure of the report which includes an overview of AFMA, followed by the factual history of the fishery and ending with the assessment of the fishery against the ecological sustainability guidelines.

Ms Maguire further informed the Committee that the HIMI Fishery specific Terms of Reference (ToR) were circulated for public comment, with a total of three being received. Ms O'Brien requested clarification on the comments that were received in terms of who they were from and the issues raised. Ms Maguire advised that they were of a minor nature and did not require an amendment to the ToR and would be taken account of when addressing the ToR. Members noted that the Chairperson of AFMA, Wendy Craik has written to Minister Hill concerning the comments and seeking his approval of the ToR.

The Committee agreed that it would be of benefit for Mr Defries to go to AAD and meet with the relevant persons to assist in the development of the report.

Mr Exel queried the 15 sitting days that is required in Parliament prior to the accreditation of the Plan and assessment, in particular in respect to exports and whether it will have an impact on the exporting of toothfish. Ms Maguire advised that the ban on exports does not take affect until December 2003, therefore, they will be permitted to continue while the report is awaiting accreditation.

The Committee thanked Ms Maguire and Mr de Fries for their update and looked forward to reading the draft report.

Agenda Item 7 - HIMI MPA

The Chair welcomed Barbara Jones and Conall O'Connell from EA to the meeting to discuss the proposal for the HIMI MPA.

Mr O'Connell informed the Committee of the following milestones that have been undertaken in the development of the MPA:

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| January 1999 | AAD undertook the conservation assessment of the fishery, as commissioned by EA; |
| February 2000 | EA received the report from AAD, at which time officers from EA addressed SouthMAC on the process and tabled the conservation report produced by AAD. The Committee advised that together with |

- SAFAG it would provide comments on the report. EA wrote to SouthMAC advising there were a lack of submissions received from the MAC, following this a submission was received from AFMA.
- November 2000 the Minister decided to accept the conservation report proposal.
- January 2001 EA held discussions with AAD concerning the overall package, with a Notice of Intent issued to establish the HIMI MPA.
- 2 April 2001 Close of comments on the Notice of Intent. Following this concerns were raised from Austral which resulted in discussions being held between Austral and the Minister. Mr Exel informed Members that EA reacted quite promptly, however, advised that Austral was not satisfied with the result, which is now back to the Minister.

The Committee noted that the process could not proceed until the Minister makes a decision on the size and extent of the MPA.

Ms O'Brien sought advice on what the response actions were from the submissions received from the public consultation phase last year. Ms Jones advised that it is not common practice for EA to provide responses to those that have submitted submissions, however, Mr O'Connell indicated that he could provide AFMA with the actions from the AFMA submissions.

Mr O'Connell advised members that EA has made no decision to change the consultation processes, as suggested by AFMA in its letter of June 2001. He believes that the process that has been undertaken has provided industry with adequate opportunity to comment. Mr Scott advised that Petuna were involved in the public consultation phase and raised several concerns, however, they have not yet received a response from EA. Mr O'Connell advised that the time has been limited to respond, as EA have been working with Austral. However, informed Mr Scott that EA would be more than willing to meet with Petuna separately.

Mr Scott expressed his concerns with the scientific shortcomings of the AAD report. Mr Exel agreed and advised that his concerns also lay with AAD, as the fishery had been developed cooperatively, however the report was compiled solely independent of the industry. Mr Hay advised that AAD had developed their Report believing that EA would consult with relevant stakeholders on the Report prior to the development of the MPA.

In summary Mr O'Connell advised that perhaps EA could have undertaken a more thorough consultation process, and agreed that lessons can be learnt.

The Chair thanked EA for attending the meeting.

The meeting concluded at 5.00pm.